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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 23.12.2024+ **ARB.P. 1761/2024 and IA No. 48024/2024**

CYFUTURE INDIA PVT. LTD.

.....Petitioner

Through: Advocate (appearance not given)

versus

BHARAT SANCHAR NIGAM LIMITED

.....Respondent

Through: Mr. M.C. Kochar, Adv.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeks constitution of an arbitral tribunal to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the background of a Notice Inviting Tender dated 17.03.2021 (hereinafter '*the NIT*') relating to establishment of contact centres for Wire-line Services including Broadband and Associated VAS.
3. A bid was submitted by the petitioner, in response to which, an advance work order dated 28.10.2021 was issued by the respondent in favour of the petitioner. However, several show cause notices dated 06.03.2023, 05.04.2023, 31.07.2023 were issued by the respondent on account of alleged 'poor performance' of the petitioner for not carrying out work in terms of the NIT.
4. Thereafter, a contract termination notice dated 29.12.2023 was issued



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by the respondent for not having received a satisfactory response to the said show cause notices; terminating the NIT and imposing penalties on the petitioner. During this time, the petitioner *vide* letters dated 19.07.2023, 08.08.2023, 03.12.2023, 02.02.2024, had also called upon the respondent to settle its outstanding dues in terms of the NIT. However, the respondent failed to settle the same.

5. Disputes between the parties have arisen on account of non-payment of the alleged monetary entitlement/s of the petitioner and breach of the terms stipulated in the NIT.

6. Clause 11 of the NIT contains the arbitration agreement and reads as under:-

“11. Arbitration

11.1 Arbitration applicable in case of supply orders/contracts with firms, other than public Sector Enterprise) (Not applicable in cases valuing less than Rs. 5 lakhs) Except as otherwise provided elsewhere in the contract, if any dispute, difference, question or disagreement arises between the parties hereto or their respective representatives or assignees, in connection with construction, meaning, operation, effect, interpretation of the contract or breach thereof which parties unable to settle mutually, the same shall be referred to Arbitration as provided hereunder:

I. A party wishing to commence arbitration proceeding shall revoke Arbitration Clause by giving 60 days’ notice to the designated officer of the other party. The notice invoking arbitration shall specify all the points of disputes with details of the amount claimed to be referred to arbitration at the time of invocation of arbitration and not thereafter. If the claim is in foreign currency, the claimant shall indicate its value in Indian Rupee for the purpose of constitution of the arbitral tribunal.

II. The number of the arbitrators and the appointing authority will be as under:

<i>Claim amount (excluding claim for counter</i>	<i>Number of arbitrator</i>	<i>Appointing Authority</i>



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<i>claim, if any)</i>		
<i>Above Rs. 5 lakhs to Rs. 5 crores</i>	<i>Sole Arbitrator to be appointed from a panel of arbitrators of BSNL.</i>	<i>BSNL (Note: BSNL will forward a list containing names of three empanelled arbitrators to the other party for selecting one from the list who will be appointed as sole arbitrator by BSNL)</i>
<i>Above Rs. 5 crores</i>	<i>3 Arbitrators</i>	<i>One arbitrator by each party and the 3rd arbitrator, who shall be the presiding arbitrator, by the two arbitrators. BSNL will appoint its arbitrator from its panel.</i>

III. Neither party shall appoint its serving employee as arbitrator.

IV. If any of the Arbitrators so appointed dies, resigns, becomes incapacitated or withdraws for any reason from the proceedings, it shall be lawful for the concerned party/arbitrators to appoint another person in his place in the same manner as aforesaid. Such person shall proceed with the reference from the stage where his predecessor had left it both parties consent for the same; otherwise, he shall proceed de novo.”

7. Disputes having arisen, a notice invoking arbitration dated 15.05.2024 was issued by the petitioner; proposing the names of three persons who could be appointed as a sole arbitrator to adjudicate the disputes between the parties. While no response was initially sent in response thereto, a reply dated 07.11.2024, i.e. after the filing of the present petition, was received by the petitioner *via* email whereby the respondent rejected the petitioner's proposal and instead called upon the petitioner to choose the sole arbitrator from a panel of three arbitrators empanelled with the respondent.

8. Learned counsel for the respondent does not dispute the existence of



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the arbitration agreement and accedes to the appointment of a sole arbitrator to adjudicate the disputes between the parties.

9. In the above circumstances, since the existence of the arbitration clause is evident from a perusal of the NIT, there is no impediment to constituting an arbitral tribunal for adjudicating the disputes between the parties, as mandated in terms of the judgments of the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532 and ***In Re: Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899***, 2023 SCC OnLine SC 1666.

10. Further, in terms of the judgments of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd*** (2020) 20 SCC 760, ***TRF Limited v. Energo Engineering Projects Ltd***, (2017) 8 SCC 377 and ***Bharat Broadband Network Limited v. United Telecoms Limited***, 2019 SCC OnLine SC 547 and ***Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)*** 2024 SCC OnLine 3219, it is incumbent on this Court to appoint an independent sole arbitrator to adjudicate the disputes between the parties.

11. Accordingly, Mr. Justice (Retd.) Najmi Waziri, (Mob. : 9810097311) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

12. The respondents shall be at liberty to raise preliminary objections as regards arbitrability/jurisdiction, if any, which shall be decided by the arbitrator, in accordance with law.

13. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties the requisite disclosure as



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required under Section 12 of the A&C Act.

14. Let the arbitration take place under the aegis of and as per the rules of the Delhi International Arbitration Centre (DIAC).

15. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.

16. Needless to say, nothing in this order shall be construed as an expression of opinion of this court on the merits of the case.

17. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

DECEMBER 23, 2024/dn